IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.100 OF 2007
WITH
CIVIL APPLICATION NO.148 OF 2007

Edward Dinyar Manekshaw Vajifdar. ..Appellant.

V/s.

Kersy Limathwall & Ors. ..Respondents.

Mr. N.V.Walawalkar, Sr.Advocate with Chirag H. Mody i/b. M/s. RMG Law Association for appellant.

Mr.Chirag Balsara i/b M/s. Mulla & Mulla & CBC for respondent Nos. 1 to 3.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 12, 2007.

P.C. :

1. Heard counsel for the parties.

2. I find no reason to depart from the conclusion reached by the Court below in dismissing the Notice of Motion. The Court below has given cogent reasons to record findings on all the three relevant issues to be considered at this stage of proceeding. The Court below has rightly found that prima facie case was not made out by the plaintiff as well as the issue of balance of convenience and irreparable loss was required to be answered against the plaintiff.

3. Counsel for the appellant/plaintiff however, contends that the Court below having recorded positive finding regarding the appointment of plaintiff as Panthaki, it ought have considered that the respondent Trust has appointed only priests and manager and the post of panthaki is still unfilled. In this backdrop, contendsd learned counsel, plaintiff would be entitled to continue to occupy the post of Panthaki. Even this argument does not commend to me.

4. Prima facie, there is substance in the stand taken by the respondents that the trustees have absolute powers to appoint manager, priest, which would include panthaki. The Court below has rightly noted and which position emerges from the record that the post of Panthaki was not hereditary post as such. On this finding the conclusion reached by the Court below that no prima facie case was made out by the plaintiff will have to be affirmed. Accordingly, this appeal should fail. The same is dismissed.

5. However, having regard to the peculiar issues raised in this proceeding, the appropriate course is to require the trial Court to dispose of the suit

expeditiously. The trial Court will be well advised to dispose of the suit preferably by end of March, 2008. All questions in the said suit will have to be decided on its own merits, uninfluenced by any observations in the impugned Judgment or for that matter the order passed in the present appeal.

6. In view of the above, civil application disposed of accordingly.